Chee Kuat Fong & Ors v Lee Wai Yen

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02–82 OF 2001
LOW HOP BING, RAUS SHARIF AND WAN ADNAN BIN MUHAMAD JJCA
3 DECEMBER 2007

Tort — Defamation — Libel — Joint tortfeasors — Whether global award and not separate awards against each defendant should be awarded — Whether award was outrageously exorbitant

On 12 November 1997, after a full trial in a libel action, the learned judge of the Kuala Lumpur High Court found for the respondent/plaintiff ('the plaintiff') and ordered all the six defendants in the court below to pay a sum of RM30,000 each by way of damages, together with interest and costs. This appeal was lodged by five appellants/defendants ('the defendants') against the quantum awarded. The libel attributable to the defendants was contained in a letter authored by the defendants against the plaintiff and addressed to the defendants' managing director. Although the extent of the publication was limited, the plaintiff was nevertheless dismissed by his employer, and his claim for unfair dismissal was rejected by the Industrial Court. The defendants' learned counsel contended that the trial court had erred in ordering separate awards against each of the defendants when they should be one global award only.

Held, dismissing the appeal with costs:

(1) The defendants were sued as joint tortfeasors. The libel was contained in a single letter authored by all the defendants who were in law and in fact joint tortfeasors (see para 9); *MGG Pillai v Tan Sri Dato' Vincent Tan Chee Yioun & Others Appeals* [1995] 2 MLJ 493 distinguished. Thus the trial court had erred in awarding separate awards for the joint fortfeasors, ie the defendants. The award should have been a global award (see para 11); *Liew Yew Tiam & Ors v Cheah Cheng Hoc & Ors* [2001] 2 CLJ 385 followed.

(2) In considering the global quantum to be awarded, the total amount of RM180,000 awarded by the learned trial judge was not outrageously exorbitant, or shockingly excessive in relation to the libel, or manifestly unreasonable, unjust or irrational. Therefore, there should be no

appellate interference. Hence, apart from the variation of separate awards of damages to a global award, the total amount of RM180,000 was a fair and just compensation. That amount should be affirmed (see para 12).

[Bahasa Malaysia summary

Pada 12 November 1997, selepas perbicaraan penuh dalam tindakan libel, hakim bijaksana Mahkamah Tinggi Kuala Lumpur memutuskan bagi pihak responden/plaintif ('plaintif') dan memerintahkan kesemua enam defendan di mahkamah bawahan membayar sejumlah RM30,000 setiap seorang melalui ganti rugi, berserta faedah dan kos. Rayuan ini telah dibuat oleh lima perayu/defendan ('defendan') terhadap kuantum yang diawardkan. Libel yang berpunca daripada defendan terkandung dalam surat yang dibaut oleh defendan terhadap plaintif dan dialamatkan kepada pengarah urusan defendan. Meskipun tahap penerbitan itu terhad, plaintif telah dipecat oleh majikannya, dan tuntutannya untuk pemecatan tidak adil ditolak oleh Mahkamah Perusahaan. Peguam defendan yang bijaksana menegaskan abhawa mahkamah perbicaraan terkhilaf dalam memerintahkan award yang berasingan terhadap setiap defendan walhal mereka patut diberikan satu award yang menyeluruh sahaja.

Diputuskan, menolak rayuan tersebut dengan kos:

(1) Defendan telah disaman sebagai pesalah tort bersama. Libel yang terkandung dalam sepucuk surat yang dibuat oleh kesemua defendan merupakan pesalah tort bersama dari segi undang-undang dan fakta (lihat perenggan 9); *MGG Pillai v Tan Sri Dato' Vincent Tan Chee Yioun & Others Appeals* [1995] 2 MLJ 493 dibeza. Oleh itu mahkamah perbicaraan terkhilaf semasa mengawardkan award berasingan untuk pesalah tort bersama tersebut. Award tersebut sepatutnya ward yang menyeluruh (lihat perenggan 11); *Liew Yew Tiam & Ors v Cheah Cheng Hoc & Ors* [2001] 2 CLJ 385 diikut.

(2) Dalam mempertimbangkan kuantum menyeluruh yang patut diawardkan, keseluruhan jumlah RM180,000 yang diawardkan oleh hakim perbicaraan yang bijaksana tidaklah melampau, atau banyak berkaitan libel, atau tidak munasabah, tidak adil atau tidak rasional. Oleh itu, tidak sepatutnya ada campur tangan pihak rayuan. Justeru itu, selain daripada perbezaan award ganti rugi yang berasingan kepada

award menyeluruh, jumlah keseluruhan RM180,000 adalah pampasan yang adil. Jumlah tersebut hendaklah disahkan (lihat perenggan 12).]

Notes

For cases on libel, see 12 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 369–527.

Cases referred to

Cassell & Co Ltd v Broome & Anor [1972] 1 All ER 801 (refd)
Green Lands Ltd v Wilmshurst [1913] 3 KB 507 (refd)
Liew Yew Tiam & Ors v Cheah Cheng Hoc & Ors [2001] 2 CLJ 385 (folld)
Ling Wah Press (M) Sdn. Bhd & Ors v Tan Sri Dato' Vincent Tan Chee Yioun & Other Appeals [2000] 2 MLJ 77 (refd)
MGG Pillai v Tan Sri Dato' Vincent Tan Chee Yioun & Others Appeals [1995] 2 MLJ 493 (distd)
Tan Sri Dato Vincent Tan Chee Yioun v Haji Hasan bin Hamzah & Ors [1995] 1 MLJ 39 (refd)

Appeal from: Suit No S5–23–35 of 1996 (High Court, Kuala Lumpur)

Andrew Ng (Yeo & Yeo) or the appellants/defendant.
Jadadish Chandra (Arbain & Co) for the respondent/plaintiff.

Low Hop Bing JCA (delivering judgment of the court):

APPEAL

[1] On 12 November 1997, after a full trial in a libel action, the learned judge of the Kuala Lumpur High Court found for the respondent-plaintiff ('the plaintiff') and ordered all the six defendants in the court below to pay a sum of RM30,000 each by way of damages, together with interest and costs.

[2] At the hearing of this appeal, both learned counsel informed this court that all the six defendants in the court below have paid RM30,000 each in satisfaction of the said judgment.

[3] The second defendant, one Mahinder Singh, who was also ordered to pay RM30,000 as damages has satisfied that judgment sum in the court below and has not lodged any appeal therefrom. This appeal was lodged by five appellants-defendants ('the defendants') only.

[4] The defendants have originally appealed against both liability and quantum. However, they have now confined the appeal to one issue only ie concerning quantum.

LIBEL

[5] The libel attributable to the defendants was contained in a letter authored by the defendants against the plaintiff and addressed to the defendants' managing director. Although the extent of the publication was limited, the plaintiff was nevertheless dismissed by his employer, and his claim for unfair dismissal was rejected by the Industrial Court.

GLOBAL AWARD

[6] Defendants' learned counsel Mr Andrew Ng contended that the trial court had erred in ordering separate awards against each of the defendants when they should be one global award only, on the authority of *Liew Yew Tiam & Ors v Cheah Cheng Hoc & Ors* [2001)] 2 CLJ 385 (CA).

[7] Plaintiff through learned counsel Mr Jadadish Chandra submitted that the damages awarded separately against the defendants were not excessive.

[8] I shall first refer to *MGG Pillai v Tan Sri Dato' Vincent Tan Chee Yioun & Others Appeals* [1995] 2 MLJ 493 (CA). In the court of first instance, the appellants and the other defendants in a libel action were ordered to pay separate sums of general damages (see *Tan Sri Dato Vincent Tan Chee Yioun v Haji Hasan bin Hamzah & Ors* [1995] 1 MLJ 39). In the Court of Appeal, it was argued that the trial court had erred in making separate awards against each appellant. At p 531A, Gopal Sri Ram JCA, with whom Lamin PCA and Abu Mansor JCA (as they then were) concurred, held that all the defendants there were sued and found liable as several and not as joint tortfeasors. Thus the trial court could make separate awards against each appellant there.

[9] It is to be noted that the capacities in which the defendants were sued ie as separate tortfeasors in *MGG Pillai*, are readily distinguishable from the defendants in the instant appeal in which the defendants were sued as joint tortfeasors. The libel in the instant appeal was contained in a single letter authored by all the defendants who are in law and in fact joint tortfeasors. The facts in the instant appeal bear a striking similarity with those in *Liew Yew Tiam & Ors*, in which the trial court made separate awards against each appellant, as follows:

First appellant	RM500,00

Second appellant	RM300,000
Third appellant	RM50,00
Fourth appellant	RM150,000
Total =	RM1,000,000

[10] At p 390, Gopal Sri Ram JCA speaking for the Court of Appeal, referred to *Cassell & Co Ltd v Broome & Anor* [1972] 1 All ER 801 (HL); and *Green Lands Ltd v Wilmshurst* [1913] 3 KB 507, and held that only a single award was admissible against all the appellants. Hence, the Court of Appeal is entitled to interfere. At p 395b, after having considered all the circumstances of the case and adopting a common sense approach to the facts, the Court of Appeal came to the conclusion that a global sum of RM100,000 would be fair, just and adequate compensation for the libel inflicted upon the respondents.

[11] Reverting to the facts in the instant appeal, on the basis of the judgment of the Court of Appeal in *Liew Yew Tiam & Ors*, the trial court had erred in awarding separate awards for the joint tortfeasors ie the defendants there. The award should have been a global award.

[12] Be that as it may, in considering the global quantum to be awarded, I am of the view that the total amount of RM180,000 awarded by the learned trial judge is not outrageously exorbitant, or shockingly excessive in relation to the libel, or manifestly unreasonable, unjust or irrational. Therefore, there should be no appellate interference. Hence, apart from the variation of separate awards of damages to a global award, the total amount of RM180,000 is a fair and just compensation. That amount should be affirmed (see *Ling Wah Press (M) Sdn. Bhd & Ors v Tan Sri Dato' Vincent Tan Chee Yioun & Other Appeals* [2000] 2 MLJ 77 (FC) per Eusoff Chin Chief Justice (as he then was).

CONCLUSION

[13] On the foregoing grounds, this appeal is hereby dismissed with costs. There shall only be a global award of RM180,000 against all the six defendants in the court below. Deposit to the plaintiff towards account of taxed costs.

Appeal dismissed with costs.

Reported by Loo Lai Mee